



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage and cleaning?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord permitted to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on October 01, 2013 for a term of one year. Rent for this unit was \$850.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00 on September 18, 2013. Both parties attended a move in and a move out condition inspection of the rental unit and the tenant agreed the landlord could keep an unspecified amount from the security deposit. The tenant provided a forwarding address in writing on August 09, 2014.

The landlord has claimed the amount of \$2,050.00 comprised of the following:

Item 1. Unpaid rent for August	\$850.00
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Item 2. Liquidated damages for breaking one year lease	\$850.00
Item 3. Flea spray treatment	\$135.00
Item 4. Carpet cleaning	\$100.00
Item 5. Curtain cleaning	\$65.00
Item 6. Door repair	\$50.00
Total amount of claim	\$2,050.00

The landlord's agent (the landlord) testified that the tenant remained in possession of the rental unit until August 09, 2014. The tenant had given notice to end the tenancy for August 01, 2014 but did not return the keys to the unit until August 09, 2014. The landlord assumed the tenant was cleaning the unit in that period. No rent was paid for August and the landlord served the tenant with a 10 Day Notice to End Tenancy on August 02, 2014 by posting the notice to the door of the rental unit.

The landlord testified that they had sought to recover the entire amount of rent for August but now seek to amend their claim for the nine days in August in which the tenant overhired at the rental unit. The landlord therefore seeks to recover \$246.77.

The landlord testified that the tenancy agreement provides for a fee of \$850.00 for liquidated damages to be charged to the tenant if the tenant breaks the lease before the end of the fixed term. The tenancy was not due to end until November 01, 2014. The landlord testified that the only costs the landlord incurred in re-renting the unit was the costs to show the unit six or seven times. No advertising costs or reference check costs were incurred.

The landlord testified that the application form for tenancy has information pertaining to charges that will be made from the security deposit at the end of the tenancy. One of these charges is for flea treatments in the unit of \$135.00. As the tenant had a dog this treatment was carried out at the end of the tenancy and the landlord seeks to recover the costs incurred of \$135.00 from the tenant.

The landlord testified that the landlord also charges \$100.00 for carpet cleaning at the end of the tenancy. The inspection report indicates that the carpets were not vacuumed and dirty and the living room carpet and bedroom carpet had staining.

The landlord testified that the tenant is required to clean the curtains at the end of the tenancy. The curtains in the kitchen and the master bedroom had marks and the second bedroom curtains were dirty. The landlord refers to the comments on the move out inspection report.

The landlord seeks to recover the amount of \$50.00 for damage to a door. The tenant had replaced the door handle and cracked the door in the master bedroom.

The landlord testified that the tenant signed to agree the landlord could keep the security and pet deposit although no amount was indicated on the inspection report at the time it was signed. The landlord therefore seeks an Order permitting the landlord to keep the security and pet deposit in partial payment of the landlord's claim.

The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputed the landlord's claims. The tenant testified that she had vacated the rental unit on July 27, 2014 and put the key under the door of the rental unit. The tenant returned on August 09, 2014 to do the move out inspection with the landlord and handed a duplicate key to the landlord which the tenant had cut. The tenant testified that she had given notice to the landlord informing the landlord that she was ending the tenancy on August 01, 2014 due to a mouse infestation. The tenant testified that there was also cockroaches and the unit was unsanitary to live in. The tenant disputed that she returned to the unit to clean and did not have possession of the unit as the tenant was out of town during the period between July 27 and August 09, 2014. The tenant testified that the landlord was aware the tenant was moving out as the landlord offered the tenant another unit to rent; however, upon inspection of that unit the tenant found mice holes which had been badly covered up so the tenant declined to rent the other unit.

The tenant testified that as she had to end the tenancy before the end of the fixed term due to the mice infestation that rendered the unit unsanitary to live in; the tenant disputed the landlord's claim to recover liquidated damages of \$850.00.

The tenant disputed that she signed to agree to flea treatments. This document was signed for by another tenant who has since moved out. The tenant disputed that her dog had fleas and therefore no flea treatment would have been required.

The tenant disputed the landlord's claims for carpet cleaning with the exception of one bedroom. The carpet was clearly not clean at the start of the tenancy as there are stains indicated on the move in inspection report.

The tenant disputed the landlord's claims for curtain cleaning. The tenant testified there is nothing to indicate that the curtains were clean at the start of the tenancy and the move in report indicates burn marks on the curtains.

The tenant agreed that the landlord could deduct \$50.00 from the security deposit for the damage to the door and a further amount for the carpet cleaning in one bedroom. The tenant requested that the balance of the security and pet deposit is returned to the tenant.

The landlord testified that the tenant informed the landlord about a mice infestation in her unit. A pest control company was sent into the unit and the landlord's maintenance people were advised to repair some holes to prevent access by mice. The tenant was also advised to put food in containers and not to leave dog food out. The tenant was advised to take out garbage, to pick laundry off the floor and to put her box spring bed off the floor. The pest control company put down sticky pads and bait boxes. The pest control company went in on February 28, 2014 and did a follow up visit in March, 2014.

The tenant testified that she followed all recommendations made by the pest control company, her bed was put on a frame, laundry was kept off the floor, food items were put in plastic boxes and dog food was not left out. The mice continued to appear in the unit and started to nest in the tenant's stove. The tenant testified that as the pest control company were working in the building they came back a third time and renewed the bait boxes. The tenant testified that she emailed the landlord on April 23, 2014 informing the landlord that the patched mouse holes were being torn out by mice and they were getting back into the unit.

The landlord testified that the tenant informed the landlord once about mice and once about the stove element not working. The landlord agreed that when the tenant gave notice to end the tenancy the tenant informed the landlord that the reason the tenant was moving out on August 01, 2014 was because of the mouse infestation and unsanitary living conditions. The landlord testified that the tenant could have left the key to the unit in the landlord's mailbox or called the office which is open 24 hours a day.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent; the landlord has the burden of proof to show the tenant remained in possession of the rental unit until August 09, 2014. When the tenant contradicts the landlord's testimony then the landlord would be required to provide corroborating evidence to support the burden of proof. In this matter I find both parties testimony to be probable and in the absence of further corroborating evidence from the landlord and therefore it is one person's word against that of the other and the burden of proof is not met. The landlord's claim to recover nine days of unpaid rent for August is therefore dismissed.

With regard to the landlord's claim to recover \$850.00 in liquidated damages as the tenant broke the lease before the end of the fixed term; In this matter if the tenant can show that the unit was unsanitary due to a mice infestation then the landlord has breached s. 32 of the *Act* by not dealing with the mice infestation satisfactorily and has not provided sanitary living conditions in the unit. If this is the case then the tenant is entitled to end the tenancy pursuant to s. as the landlord breached s. 32 of the *Act*.

While I accept that the landlord did get in a pest control company to deal with the mice situation, the landlord did not continue to follow through on these treatments until such a time as the mice infestation was eradicated. A landlord cannot expect a tenant to continue to live in an unsanitary unit after the tenant has followed all precautions to keep the unit free from mice. I therefore find the tenant was entitled to end the tenancy early in accordance with s. 45(3) of the *Act* as the landlord has not complied with a material term of the tenancy agreement and s. 32(1) of the *Act* in ensuring the rental unit is maintained in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. As such the landlord's claim for liquidated damages is denied.

With regard to the landlord's claim for flea treatments of \$135.00; a landlord must not put an agreement in place at the start of the tenancy which requires a tenant to agree to any amounts being deducted from the security deposit. This is an unconscionable term and is not enforceable. The landlord must show that there were fleas in the tenants unit that required a flea treatment to take place. In the absence of evidence to show the tenants dog brought fleas into the unit it becomes the landlord's choice to have the unit sprayed for fleas and this cost will not be borne by the tenant. The landlords claim for flea treatment is therefore denied.

With regard to the landlord's claim for carpet cleaning; a tenant is required to have the carpets shampooed or steam cleaned at the end of a tenancy if the tenant has a pet that is not caged. The tenant did have a dog; however, the landlord is equally required to provide carpets in a clean manner at the start of the tenancy. The move in condition inspection report clearly shows that the carpets had stains in the living room and one bedroom. At the end of the tenancy the tenant agreed that some staining occurred to the other bedroom carpet and the landlord may deduct an amount to clean that bedroom carpet from the security deposit. I therefore deny the landlord's claim for \$100.00 for carpet cleaning in the whole unit but will deduct the amount of \$33.00 to clean one bedroom carpet from the security deposit.

With regard to the landlord's claim for curtain cleaning; there is insufficient evidence to show the curtains were clean at the start of the tenancy. If this is the case the tenant cannot be held responsible to clean the curtains at the end of the tenancy. The move in condition inspection report indicates that the curtains

had some burn marks; the landlord claims the curtains were dirty and had snag marks at the end of the tenancy. I am not satisfied the landlord has met the burden of proof in this matter and therefore I must deny the landlord's claim for curtain cleaning.

A tenancy agreement or addendum to a tenancy agreement must not indicate that a landlord is entitled to retain any amounts from a security deposit at the end of the tenancy. This is contrary to the *Act* and any matters such as this are not enforceable under the *Act*.

The tenant does not dispute the landlord's claim of \$50.00 for the replacement lock and crack in the bedroom door. I have therefore deducted this amount from the security deposit.

As the landlord's claim has very little merit I find the landlord must bare the cost of filing their own application. The landlord may retain the following amount from the security deposit pursuant to s. 38(4)(b) of the *Act*. The balance of the security and pet deposit must be returned to the tenant pursuant to s. 38(6)(b) of the *Act*:

Carpet cleaning	\$33.00
Damage to door	\$50.00
Total amount the landlord may retain from the security deposit	\$83.00
Balance of security and pet deposit to be returned to the tenant	\$767.00

Conclusion

For the reasons set out above, I grant the landlord's claim, in part, to keep the sum of \$83.00 from the security deposit.

A copy of the tenant's decision will be accompanied by a Monetary Order for the balance of the security and pet deposit of **\$767.00**. The Order must be served on the landlord. If the landlord fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 11, 2015

Residential Tenancy Branch

